Supreme Court, U.S.
FILED

10-650 NOV 15 2010

OFFICE OF THE CLERK
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No.

In the
SUPREME COURT OF THE UNITED STATES

Dr. Joseph A. Mayercheck,
Petitioner

vs.,

Judges of the Pennsylvania Supreme Court,
Judges of the Pennsylvania Superior Court,
Judge Christopher Feliciani,
Judge Rita Hathaway,
Master, H. Gervase Fajt,
William Wiker,
Barbara J. Irwin Mayercheck,
Disciplinary Board of the Supreme Court,
Respondents

Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

PETITION FOR WRIT OF CERTIORARI

Dr. Joseph A. Mayercheck, pro se
Petitioner
10 Thomas Jefferson Ct.
Irwin, Pa. 15642
724-863-1627

QUESTIONS PRESENTED FOR REVIEW

1. Is "case fixing" by a judge considered a form of corruption and thus not a judicial act within their legal jurisdiction?

2. If the answer to Question #1 is in the affirmative, does a private citizen that has been harmed by judicial "case fixing", have protection, and recourse, under the First, Fifth, Eleventh and Fourteenth Amendments of the United States Constitution; U.S. Code 42, Chapter 21, Sections 1983 and 1985 ?

3. Therefore, can the Civil Rights of private citizens co-exist with Absolute Judicial Immunity where there is blatant "case fixing"/corruption by Judges and State Courts?

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ORDERS BY THE COURT BELOW

1. Order by the Third Circuit Court of Appeals, dated August 18, 2010, affirming the Order of the District Court dismissing Plaintiff's Complaint.

Appendix A

2. Order of the United States District Court, dated August 14, 2009, dismissing Plaintiff's Complaint.

Appendix B

JURISDICTION

The United States Court of Appeals for the Third Circuit issued an Order in this matter dated August 18, 2010 (Appendix A). This Court's jurisdiction is invoked under Title 28, U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. U.S. Constitutional Amendments-First, Fifth, Eleventh and Fourteenth.

2. U.S.C. 42, Sec. 21, #1983, 1985, 1986 and 1988

3. Title 28, U.S.C. 1331, 1343, 2201 and 2202

STATEMENT OF THE CASE

Petitioner and his wife, defendant-Barbara J. Irwin Mayercheck, were having marital discord in 1999. Both agreed to sign a home-made legal "divorce contract" to avoid the cost of extensive legal fees should a divorce become imminent. Wife had been embarking on what only can be called a license to have sexual affairs without Petitioner's knowledge. Wife wanted a second, more legal, divorce contract in 2000 and sought the advise of her lawyer. Wife's lawyer constructed a new divorce contract that paralleled the most recent decision handed down by the Penna. Supreme Court in Vaccarello v Vaccarello, no. 0029 W.D., Supreme Ct., 1999, 563, Pa. 93. This second divorce contract was signed by both parties, in front of a Prothonotary Notary, and filed in the Westmoreland County Prothonotary Office in 2000 with Wife's divorce Complaint. Many of the items addressed in the 1999 divorce contract were already complied with so little was left in the 2000 contract for compliance. The parties continued to live in the marital residence but

separate and apart. After a few months, wife withdrew her 2000 divorce Complaint but the parties NEVER signed any legal document dismissing the parties divorce contract. In 2002, wife continued her out of marriage sexual affairs with various paramours and filed another divorce in 2002. Petitioner hired legal counsel that produced the 2000 divorce contract filed with the court for enforcement with Judge Rita Hathaway. Petitioner had previously had problems with Judge Rita Hathaway where wife and her counsel were involved in documented ex-parte conferences/meetings that harmed Petitioner. This Petitioner filed formal Complaints against Judge Rita Hathaway with the Judicial Conduct Board and wife's counsel, Paul Miller, with the Bar Association. Nothing was ever investigated with the well documented ex-parte violations. Petitioner then started receiving phone calls implicating wife and Judge Rita Hathaway in a bribery scam that explained Judge Hathaway's involvement in "court orders for money". The phone calls stated Judge Rita Hathaway fixed cases for money that involved not only Petitioner's wife but

one called "Wojcik". What followed next in Judge Rita Hathaway's court was beyond human comprehension. As stated previously, Petitioner's legal counsel presented the 2000 divorce contract for enforcement. Judge Rita Hathaway told wife and her counsel, Paul Miller, that "unless there is a document dismissing this(the divorce contract), then it is probably enforceable". At the very next hearing, wife produced a very fraudulent document that alleged the parties dismissed the 2000 divorce contract. Wife was asked on cross-examination where the original was to this alleged dismissing document and wife testified under oath that she gave it to the Prothontary for filing and apparently it was lost there! The fraudulent document also showed wife using her signature (Barbara J. Irwin Mayercheck) as she ONLY started using in 2002; not 2000 when the dismissing document was allegedly fabricated. Petitioner testified that he did not sign the dismissing document. Only a poor "copy" existed and wife signed her name differently that court records had previously. These important facts were brought to the attention of the District Court

as well as the Third Circuit Court of Appeals. In Pennsylvania, Judges are to enforce divorce contracts under contract law and they are not permitted to place their own interpretation on the parties intent. Judge Rita Hathaway not only imposed her own personal interpretation but then dismissed the 2000 divorce contract and called wife a credible witness! Petitioner Appealed this decision to the Penna. Superior Court where the court set aside a briefing schedule until it heard from Judge Rita Hathaway stating her decision was interlocutory. The Penna. Superior Court then violated a landmark decision by the Penna. Supreme Court above in Nationwide Mutual Ins. Co. v Deborah L. Wickett, et al. 563 Pa. 595; 763 A 2d 813, 2000 Pa. Lexis 3009. The Penna. Supreme Court reasoned that 42 Pa. C.S. 7532 defines any order in a declaratory judgment action that either affirmatively or negatively declares "rights, status, and other legal relations" as a final order and not interlocutory. Judge Rita Hathaway's dismissing of the 2000 divorce contract was in fact negatively declaring rights of the parties. The Penna. Superior Court

then dismissed the Appeal at the urging of Judge Rita Hathaway. Thus, this is the reason in naming the Penna. Superior Court as a Defendant. Petitioner was now forced to go back a litigate all the issues decided by the 2000 divorce contract. Strengthened by the dismissal of the Appeal by the Penna. Superior Court, the Westmoreland County State Courts went on a reckless and constant agenda violating Petitioner's Constitutional Rights by ignoring Appellate case law and Rules of Civil Procedure. Petitioner looked to the Federal Court in 2004 by filing 04-0295 in the District Court. That Complaint was dismissed and an Appeal with the Third Circuit was dismissed as well as 04-1839. This U.S. Supreme Court denied Certiorari as 04-1654. Petitioner was forced to go back to the corrupt Westmoreland County State Court for more corruption. As a last resort, Petitioner filed an emergency Petition for Relief, under the Penna. Supreme Court's King Bench Powers as 71 WM 2007. Access was denied so Petitioner asked the Penna. Supreme Court for a Writ of Mandamus to order the lower court to follow the law. That Writ

was denied thus the reason for naming the Penna. Supreme Court as a Defendant also. Petitioner never realized that justice and access to Appellate Courts were strickly for lawyers in large Firms and pro se litigates barred. Wife filed her last divorce Complaint in 2002. Now eight and one-half years later, there still is no resolution in the lower court. A Younger abstention is met when the State Courts do not give adequate and timely DUE PROCESS to raise Constitutional claims, Monroe v Pape, 365 U.S. 167 (1961); State remedy need not first be sought before Federal. Did "progressive federal rulings" now displace this sound and protective case? What certainly must be very clear here is that Petitioner has done everything legally possible to secure what is fast becoming extinct in this country....justice. However, Petitioner wants this High Court to know that he went to the various Disciplinary Boards also. Several Complaints were filed with the Judicial Conduct Board and the Bar Association. However, those Boards do nothing; let me explain. In Pennsylvania, we had two Judges, Mark A. Ciavarella and Michael Conahan, that were taking

kick-backs for sending unrepresented juveniles to certain focused favored detention centers. The two Judges received about 3 million dollars over a period of six years involving about 6000 cases! The prosecutors obviously knew the kids were without legal representation and to proceed or not report this is simply prosecutorial misconduct; so what in Pennsylvania! The two Judges received the money from their cohorts in crime(lawyers) that owned the detention centers and paid money for each juvenile sent to their detention center; so what in Pennsylvania! Why did it take six years to expose these criminal Judges? Why not just three years? Why not just the first case! The only reason these corrupt Judges, Ciavarella & Conahan, were exposed was not from the Judicial Conduct Board or within the legal system, but only due to public pressure and the media. At a Inquiry set up by the Penna. Supreme Court, when an Assistant District Attorney from Luzerne County (site of crimes) was asked why these juveniles were ALL sentenced and sent to these specific detention centers. his answer was

simply, "I assumed this was part of our no tolerance policy". The Penna. Supreme Court dismissed all cases against these thousands of juveniles. Why? Because the High Court in Pennsylvania had more than a black eye and wanted to quickly get this case out of the headlines and public view. The lead counsel for the Judicial Conduct Board, Joseph Massa, was asked if these corrupt Judges were ever sent any letters of "caution" or "to seek counsel" (normal procedures used in judicial complaints) and his answer was "no". The Pennsylvania Supreme Court appointed Senior Judge Arthur E. Grim to oversee the Commission on Luzerne County Judicial corruption and Penna. Superior Court Judge John Cleland to Chair this Commission. Both Judge Grim and Judge Cleland stated for the record that corrupt Judges Ciavarella & Conahan should be held accountable. To date, the only crime charged was that of tax evasion since both Judges never paid taxes on their "kick-back" money in the millions. When families of the unrepresented, and unnecessarily detained, juveniles filed Civil Complaints in Federal Court, yes, the Federal judge

stated the public may not like his decision but Ciavarella & Conahan had ....absolute judicial immunity! There are many cases of judicial corruption in Pennsylvanis but if they cannot find, investigate and prosecute over six years and 6000 cases with Ciavarella & Conahan, how could they ever expose and prosecute Complaints by this Petitioner with Judge Rita Hathaway and the other Defendants. It simply is a case of the fox guarding the henhouse. Petitioner also wants to mention that when he filed Complaints with wife's lawyers, the Disciplinary Board of the Penna. Supreme Court threatened Petitioner with Contempt if he exposed these violating lawyers for their misconduct. Thus, why they too are a Defendant. Instead of investigating, these Boards intimidate. Do the Pennsylvania State Courts seem two-faced? In a judicial corruption case involving another judge taking pay-offs, the Appellate court stated in In re: McFall, 617 A. 2d 707, 711 (Pa. 1992), that " the impartiality of the court, which is a fundamental prerequisite of a fair trail, must be deemed

compromised by appearance alone, thus eliminating the need for establishing actual prejudice." Has "progressive rulings" made this decision obsolete also? In United States of America v Michael T. Conahan and Mark A. Ciavarella, Jr., No. 3:09-CR-28, United States District Court, MD, Federal Judge Edwin M. Kosik stated the Pennsylvania Constitution is the ultimate binding legal authority when it states a judge shall not engage in any activity prohibited by law and shall not violate any canon of legal or judicial ethics prescribed by the Supreme Court (Pa. Const., Art. V, #17b). In this instant case, Judge Rita Hathaway clearly participated in ex-parte conferences with wife and lawyer and clearly violated Appellate case law in Pennsylvania for no other reason than her involvement in case fixing. The other Defendants in this case have merely "circled the wagons" around Judge Hathaway and her corruption no different than all the Penna. State Courts did for years with convicted Judges Conahan & Ciavarella. Federal Judge Kosik, in Conahan & Ciavarella, also

went on to say that, " what has been written about judges, that above all things, integrity is their lot and proper virtue, the landmark, and he that removes it, corrupts the fountain." If it wasn't for private citizens and the media, corrupt Judges Conahan & Ciavarella would still be counting their money at the expense of unrepresented juveniles in Pennsylvania and this Petitioner is sentenced to an 8-15 year simple divorce due to Judge Rita Hathaway and the other Defendants. As stated previously, the lower State Court has still not made a decision. Penna. Rules of Civil Procedure state the Master must give the court a written report within 30 days; that was about 200 days ago and nothing. Then Judge Feliciani will hear Exceptions and only months later render his final Order. Since Petitioner has exposed all levels of the Pennsylvania State Courts with Case fixing, corruption and malfeasance, what chance will this Petitioner then have in any Appeals in Pennsylvania where he will end up back here Appealing the decision of the Penna. Supreme Court in a simple divorce; figure about 15 years total. What exactly is meant by

TIMELY in securing Equal Protection under the Law and a Younger abstention? Does TIMELY mean in excess of 8 years or is this open-ended and could mean forever when it comes to judicial corruption denying this Petitioner not only Equal access but of course, justice. When Federal Judge Edwin M. Kosik stated that The Penna. Constitution was the ultimate binding legal authority when dealing with corrupt judges, so too should the Penna. Constitution be the ultimate binding legal authority in granting justice to private citizens. Pennsylvania Constitution, Art. V, sec. 10; 42 Pa. C.S., sec. 502 states, " the Supreme Court shall have AND EXERCISE the powers vested in it by the Constitution of Pennsylvania, including the power generally to minister JUSTICE to ALL persons and to exercise the powers of the court, as fully and amply, to ALL intents and purposes, as justices of the Court of the King's Bench." It doesn't say to some persons or to some intents, but to ALL! This Petitioner has been to all levels of the Pennsylvania State Courts and to all levels of the Federal Courts looking for Equal Protection under the Law with no

results thus experiencing many violations of his Constitutional Rights. In the Luzerne County, Penna. corruption debacle, the U.S. prosecutor has already indicted over 23 defendants in that county alone for various forms of corruption. Most will be held accountable except the judges and lawyers. Would anyone be so naive to think corruption exists only in Luzerne County, Pennsylvania? In Stump, 435 U.S. at 362 (1978), this High Court formulated a 2-prong test to determine if an act is judicial. The first is whether the function is one normally performed by a judge while the second asks whether the judge acted within complete absence of all jurisdiction. In this instant case, Judge Rita Hathaway's ex-parte meetings are not a function normally performed by a judge. Second, when Judge Rita Hathaway took her oath of office, that meant to enforce the law and the U.S. Constitution; Judge Hathaway did not enforce the laws governing divorce contracts; Judge Hathaway did not enforce the law in Vaccarello; Judge Hathaway acted in complete absence of all

jurisdiction in participating in ex-parte meetings. The other judicial Defendants in this case merely protected Judge Rita Hathaway the same way corrupt Judges, Ciavarella & Conahan, were ignored and protected by all levels of the Pennsylvania State Courts and all the various Disciplinary Boards. Absolute Judicial Immunity needs a CORRECTION to stop corrupt judges from preying on private citizens when they (judges) know there will be no consequences to be paid thus violating the U.S. Constitution and the Amendments of private citizens.

REASONS FOR GRANTING THE PETITION

1. NO WHERE TO GO. Petitioner has pleaded to all levels of the Pennsylvania State Courts over the last 8-9 years where he has been denied access to justice or simply ignored. Petitioner has filed several formal Complaints with the various Disciplinary Boards in Pennsylvania where his plea has been also ignored or where the Disciplinary Board of the Penna. Supreme Court has intimidated and threatened Petitioner with contempt should he be so unwise to expose corruption, malfeasance and malpractice. Petitioner's case is not an isolated example of what goes on in Pennsylvania as evidenced in the Luzerne County corruption case of Judges Ciavarella & Conahan. Violations-Amendment # 1, 5 and 14

2. JUDGES ARE ABOVE THE LAW...AND ACT AS IF THEY ARE. In Plessy v. Ferguson, 1892, the U.S. Supreme Court stated it was okay to have two different railroad cars for black Americans and white Americans; in essence "separate but equal". 62 years

later in Brown v. Board of Education, 1954, the U.S. Supreme Court stated that "separate but equal" would no longer be the law of the land. But did that apply to all citizens in all professions? Absolute Judicial Immunity is nothing more than legal apartheid; the policy of strict legal separation and discrimination against private citizens by the judiciary. The Eleventh Amendment states that individuals can sue State Authorities in Federal Court for Constitutional Rights. And in this instant case, the State Courts can, and should, address Constitutional violations against this Petitioner but these State Court Defendants have purposefully ignored their duties with malice thus leaving Petitioner no recourse but to turn to the federal Courts. Even our Holy Bible made reference to anyone thinking they are better and above all consequences; in Philippians 2:3 (NLT), " Don't be selfish; don't try to impress others. Be humble, thinking of others as better than yourselves." Do judges think of themselves as better than others? Absolutely! When corrupt judges hide behind Absolute Judicial immunity, guarenteed a private

citizen has been harmed by what can only be called a coward. Legal counsel for the judicial Defendants is A. Taylor Williams. Ms. Williams represents corrupt Judges Ciavarella & Conahan as well as other corrupt judges. She makes a living just by pressing "print" on her computer that spits out all the "progressive" Rulings that guarantees corrupt judges will not be held accountable. Petitioner will not cite these cases except for the Federal Court Improvement Act-1996 . This Act was passed by Congress that can only be described as an insider job where most of Congress are lawyers. This act was labeled as a "correction" to continue to guarantee Absolute Judicial Immunity. This Act cannot co-exist with the Eleventh Amendment; it is unconstitutional. These "progressive" Rulings by the Federal Courts have chipped away at private citizens Rights that should rise above all. It has been stated, in prior Rulings, that judges should not have the threat of a lawsuit hanging over their heads when they are making such important decisions. If that is true, can not doctors, having real life and

death in their hands, not want the threat of a lawsuit hanging over their heads also. Yet every third commercial on television is a lawyer hawking their wares for medical malpractice. Are judges above the law with Absolute Judicial Immunity? Absolutely! In addition, when a doctor is sued, his name and details of the claim go into a National Data Bank for all private citizens to view. Judges and lawyers have conveniently passed laws in State Constitutions giving them confidentiality. Is there disparity here? Absolutely! It is only a coward that does not want to be held accountable and cling to progressive Federal Rulings of Absolute Judicial Immunity. A "correction" is needed. Changes are demanded in Congress thanks to T.E.A. party activists and so too will judicial changes need to become a part of this society that demands accountability. Violations-Amendment #1, 5 and 11.

3. TIMELY DUE PROCESS. Petitioner is asking this High Court to define "timely" when a private citizen is severely harmed by State Actors before the Federal Courts must intervene. Also, Petitioner has

been "incarcerated" to the Pennsylvanis State Courts for over 8 years, and ongoing, and certainly this qualifies for a Younger abstention; Violations- AMENDMENTS # 1,5,11 AND 14.

4. THE LONE RANGER. Petitioner will be 66 years of age soon and not in great health. As a pro se litigant, Petitioner can be factual and frank about Absolute Judicial Immunity. This High Court may never see another petition like this one looking for a "correction" in judicial immunity as no lawyer will tell this Court the truth for fear of retaliation by the legal system and judges. This Court can pretend that judicial corruption is minimal and need not address it but the fact is that this society has reached an epidemic with judicial and legal corruption. Drug wars are infiltrating the infrastructure of our legal process. Illegal immigration will play a big part in corruption. And of course, we just have greed like Judges Ciavarella & Conahan and Rita Hathaway. Corruption fears nothing when there is no penalty and no enforcement by the Federal Courts with the Eleventh Amendment. Respect for the judiciary does

not come simply wearing a black robe; it must be earned! The only way private citizens can respect Congress, the Administration, lawyers and judges is for all to be on an even playing field and all being held accountable. The Defendants in this case must be held accountable and the impasse of Absolute Judicial Immunity must be "corrected" as it violates the U.S. Constitution and the Amendments. The Third Circuit Court of Appeals decided an important question of Federal law that should be settled by this High Court as it conflicts with relevant decisions of this High Court. Petitioner has appealed to this High Court in the past when his only child was taken away by corrupt judges, W. Terrance O'Brien and Lawrence Kaplan in Allegheny County, Pennsylvania; Petitioner never saw his child again even though his parenting record was spotless. Petitioner Appealed to this High Court a few years ago when judicial corruption was in its infancy in this divorce case only being a few years old then. Here we are again. Matthew 7:7-8 (NLT). "keep on asking, and you will receive what you

ask for. Keep on seeking, and you will find. Keep on knocking, and the door will be opened to you. For everyone who asks, receives. Everyone who seeks, finds. And everyone who knocks, the door will be opened. Does the United States Supreme Court want to restore the integrity of the judiciary or will the fountain continue to be corrupted? Violations: Amendments #1,5,11 and 14. Thank you.

CONCLUSION

For the reasons set before, this Petition for Writ of Certiorari to the United States Third Circuit of Appeals should be granted.

Petitioner states this petition is less than 5000 words.

Dr. Joseph A. Mayercheck

Respectfully Submitted,

Oct. 13, 2010
date

Dr. Joseph A. Mayercheck
Pro se
10 Thomas Jefferson Ct.
Irwin, Pa. 15642
724-863-1627

UNITED STATES COURT OF APEALS

FOR THE THIRD CIRCUIT

NO. 09-3575

DR. JOSEPH A. MAYERCHECK

Appellant

v.

JUDGES OF THE PENNSYLVANIA SUPREME COURT; JUDGES OF THE PENNSYLVANIA SUPERIOR COURT; JUDGE CHRISTOPHER FELICIANI; JUDGE RITA HATHAWAY; MASTER H. GERVASE FAJT; WILLIAM WIKER; BARBARA J. IRWIN MAYERCHECK; DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA

On the Appeal from the United States District Court
for the Western District of Pennsylvania
(D.C. Civil Action No. 08-cv-01112)
District Judge: Honorable Gary L. Lancaster

Submitted Pursuant to Third Circuit LAR 34.1(a)
August 11, 2010
Before: BARRY, AMBRO, and COWEN, Circuit Judges

JUDGMENT

This cause came to be considered on the record from the United States District Court for the Western District of Pennsylvania and was submitted to Third

Circuit LAR 34.1 (a) on August 11, 2010. On consideration wherefore, it is now hereby

ORDERED and ADJUDGED by this Court that the judgment of the District Court entered August 17, 2009, be and the same is hereby affirmed. Costs will be taxed against Appellant. All of the above in accordance with the opinion of this Court.

ATTEST:
/s/Marcia M. Waldron

Clerk

Dated: August 18, 2010

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF
PENNSYLVANIA

DR. JOSEPH A. MAYERCHECK
Plaintiff

V.
JUDGES OF THE PENNSYLVANIA
SUPREME COURT, et al,
Defendants

Civil Action No. 08-1112
Judge Gary L. Lancaster/
Magistrate Judge Lisa Pupo Lenihan

MEMORANDUM ORDER

Plaintiff initiated this action by filing his Complaint (Doc No. 1) with the Clerk of Court on August 8, 2008. Judge Lancaster was named the presiding judge on February 2, 2009, and the case was referred to United States Magistrate Judge Lisa Pupo Lenihan for pretrial proceedings in accordance with the Magistrates Act, 28 U.S.C. #636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Magistrate Judge's Report and Recommendation (Doc. No. 37), filed on July 13, 2009, recommended that the Motions to Dismiss (Doc. Nos. 8, 23 and 29) be granted and the Plaintiff's claims be dismissed, with prejudice. Service was made on the Plaintiff via United States

Mail to his address of record and electronically on counsel for the Defendants. The parties were informed that in accordance with Magistrate Judges Act, 28 U.S.C. # 636(b)(1)(B)and (G) and Rule 72.1.4(B) of the Local Rules for Magistrates, that they had ten(10) days to file any objections. Plaintiff filed timely Objections to the Report and Recommendation (Doc. No. 37) on July 23, 2009. The objections were found to be without merit. After reviewing the pleadings and the documents in the case, together with the report and recommendation and the objections thereto, the following is entered:

AND NOW, this 14 day of August, 2009;
IT IS HEREBY ORDERED that Defendant's Motion to Dismiss (Doc. No. 8) is GRANTED.
IT IS FURTHER ORDERED that Defendant's Motion to Dismiss (Doc. No. 23) is GRANTED.
IT IS FURTHER ORDERED that Defendant's Motion to Dismiss (Doc. No. 29) is GRANTED.
IT IS FURTHER ORDERED that the Report and Recommendation (Doc. No. 37) of Magistrate Judge Lenihan, dated July 13, 2009, is adopted as the opinion of the court.

G.L. Lancaster/s
Judge Gary L. Lancaster
United States District Judge

Cc: Lisa Pupo Lenihan
U.S. Magistrate Judge
Joseph A. Mayercheck
Counsel of record

Supreme Court, U.S.
FILED

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Master, H. Gervase Fajt,
William Wiker,
Barbara J. Irwin Mayercheck,
Disciplinary Board of the Supreme Court,
Respondents

Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

SUPPLEMENTAL APPENDIX C

Dr. Joseph A. Mayercheck, pro se
Petitioner
10 Thomas Jefferson Ct.
Irwin, Pa. 15642
724-863-1627

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Judgment of the United States Court of Appeals
For the Third Circuit, entered August 18, 2010,
is attached to the Petition as Appendix A-25

Memorandum Order of the District Court, dated
August 14, 2009, is attached to the Petition as
Appendix B-27

Other material relevant to the Petition as per
Rule 14(i)(vi):

1. District Court designating case to ADR, Alternative Dispute Resolution, program.. C-13
2. Financial Ledger of Wife's attorney, Paul Miller, showing charge for ex-parte meeting. Paul Miller was not in court on 6/7/2002... C-15
3. Prothonotary Official Docket Entries showing Restraining Order entered on 6/7/2002 and then being Rescinded on Monday, 6/10/2002. .....C-16
4. Copy of Wife's dismissal of her divorce Complaint in 2000 showing Notary and Filing with Prothonotary C-17
5. Fraudulent (Petitioner never signed) Document wife alleged was made one hour after her divorce complaint dismissal. Wife now used her maiden name (Irwin) that she never used until 2002. Document not Notarized nor filed with Prothonotary.... C-18

Service List C-19

Not Precedential

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 09-3575

Dr. Joseph A. Mayercheck,
Appellant

v.

Judges of the Pennsylvania Supreme Court; Judges of the Pennsylvania Superior Court; Judge Christopher Feliciani; Judge Rita Hathaway; Master H. Gervase Fajt; William Wiker; Barbara J. Irwin Mayercheck; Disciplinary Board of the Supreme Court of Pennsylvania

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On Appeal from the United States District Court
For the Western District of Pennsylvania
(D.C. Civil Action No. 08-cv-01112)
District Judge: Honorable Gary L. Lancaster

Submitted Pursuant to Third Circuit LAR 34.1(a)
August 11, 2010
Before: BARRY, AMBRO, and COWEN, Circuit Judges
(Opinion filed: August 18, 2010)

OPINION

C- 1.

PER CURIAM

Dr. Joseph A. Mayercheck, proceeding pro se, appeals from the order of the District Court granting the defendants' motion to dismiss. For the following reasons, we will affirm.

I.

In August 2008, Mayercheck filed a pro se complaint in the district Court alleging that the defendants conspired to deprive him of his federal constitutional rights during divorce proceedings from his wife, defendant Barbara Mayercheck. Mayercheck alleged that in May 1999, he and Barbara signed a divorce contract. In May 2000, Barbara had an attorney draft an identical contract, which the parties each signed. Mayercheck alleged that the contract was filed with the prothonotary in the Court of Common Pleas in Westmoreland County. According to Mayercheck, Barbara withdrew her divorce complaint and then refiled in 2002. Mayercheck alleged that defendant Judge Hathaway signed a temporary restraining order that Mayercheck filed to keep Barbara away from his dental practice, but then lifted the order following an

ex-parte meeting with Barbara and her lawyer. Mayercheck filed a written complaint against Judge Hathaway with the Presiding Judge of Westmoreland County and the Judicial Conduct Board of the Supreme Court of Pennsylvania, and informed the Federal Bureau of Investigation.

Mayercheck went on to allege that Barbara introduced fraudulent documents and untruthful testimony at their 2003 divorce hearing regarding the 2000 contract. He asserted that Judge Hathaway relied on the false evidence to find that the contract was unenforceable, and ordered Mayercheck to pay Barbara alimony pendente lite. Mayercheck filed an appeal, which the Superior Court of Pennsylvania denied as interlocutory.

Defendant Judge Feliciani appointed Master Fajt to preside over the proceedings pertaining to the distribution of Mayerchecks' assets. Mayercheck alleged that Barbara and her attorney, defendant Wiker, failed to comply with court directives and that Judge Feliciani conspired with Barbara and Wiker. He further claimed that Wiker failed to follow Master Fajt's 2006 order requiring

both parties to pay fees for filing pre-trial statements, that he filed a motion for sanctions against Barbara and Wiker, and that, in furtherance of the conspiracy, Judge Feliciani and Master Fajt permitted Barbara and Wiker to violate procedural rules. Mayercheck also alleged that the Disciplinary Board's failure to act on his complaint regarding the above violations is evidence of its involvement in the conspiracy against him.

Mayercheck's complaint sought a declaratory judgment that would enforce the 2000 divorce contract and make defendants responsible for their fees. He sought damages in excess of ninety-eight million dollars on federal civil rights and state law claims. The defendants filed motions to dismiss, which the Magistrate Judge recommended the District Court grant. The Magistrate Judge found that the District Court lacked jurisdiction over Mayercheck's equitable and civil rights claims due to the Rooker-Feldman doctrine, the Domestic Relations Exception to federal jurisdiction, and Eleventh Amendment immunity. In addition, the Magistrate Judge found that, even if the court did

Have subject matter jurisdiction, Mayercheck failed to state a claim for civil rights violations on which relief could be granted under Federal Rule of Civil Procedure 12(b)(6). Finally, the Magistrate Judge determined that, given Mayercheck's failure to state a claim for relief under the Civil Rights Act, the District Court lacked supplemental jurisdiction over his remaining state law claims. After considering Mayercheck's objections, the District Court agreed, granted the motions to dismiss, and adopted the Report and Recommendations as its opinion. Mayercheck filed a timely appeal.

II.

We have jurisdiction under 28 U.S.C., 1291. Our review of the District Court's order is plenary. See Santiago v. GMAC Mortgage Group, Inc., 417 F. 3d 384, 386 (3d Cir. 2005). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face'" Ashcroft v. Iqbal, 129 S.Ct. 1937, 1949 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). In deciding A motion to dismiss, a court must determine

Whether the complaint "pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for misconduct alleged." Id.

III.

A. Jurisdiction

1. The Rooker-Feldman Doctrine

The District Court first determined that it lacked jurisdiction over Mayercheck's complaint under the Roocker-Feldman doctrine, which bars district courts from reviewing certain state court actions. See Rooker v. Fid. Trust Co., 263 U.S. 413 (1923); D.C. Court of Appeals v. Feldman, 460 U.S. 462 (1983). The doctrine will bar a claim in federal court when the claim: (1) "was actually litigated in state court prior to the filing of the federal action," or (2) "is inextricably intertwined with state adjudication, meaning that federal relief can only be predicated upon a conviction that the state court was wrong." In re Knapper, 407 F. 3d 573, 580 (3d Cir. 2005). In this case, Mayercheck's complaint sought enforcement of all the provisions of the alleged divorce contract, and he based his claim for damages on charges that the

state courts made a series of wrongful decisions on evidentiary issues. He explicitly requested that the state court decisions be overturned. Accordingly, the District Court correctly concluded that it lacked jurisdiction to review his claims.

2. The Domestic Relations Exception

The District Court also properly determined that it lacked jurisdiction under the domestic relations exception to federal jurisdiction. This exception divests federal courts of jurisdiction over cases "' involving the issuance od a divorce, alimony, or child custody decree.'" Matusow v. Trans-County Title Agency,LLC, 545 F.3d 241, 245 (3d Cir. 2008) (quoting Ankenbrant v. Richards, 504 U.S. 689, 704 (1992). Therefore, as to Mayercheck's request for declaratory relief, the District Court lacked jurisdiction to enter an order pertaining to a divorce decree or to alimony.

3. Eleventh Amendment Immunity

The Disciplinary Board of the Pennsylvania Supreme Court argued that it was immune from suit under the Eleventh Ammendment. The District Court agreed, as the Eleventh Amendment has

Been interpreted " to make states generally immune from suit by private parties in federal court." MCI Telecomm. Corp. v. Bell Atl. Pa. 271 F.3d 491, 503 (3d Cir. 2001). The immunity extends to state agencies and departments, id, and this Court has held that Pennsylvania state courts are agencies of the Supreme Court. See Callahan v. City of Phila., 207 F. 3d 668, 672 (3d Cir. 2000). As none of the exceptions to the Eleventh Amendment immunity applies, see MCI Telecom. Corp. 271 F 3d at 503, the District Court correctly concluded that Mayercheck's claims against the Disciplinary Board should be dismissed as barred under the Eleventh Amendment.

B. Rule 12(b)(6)

The District Court went on to reason that even if it were able to exercise subject matter jurisdiction over Mayercheck's civil rights and tort claims, he failed to state a claim for relief under Federal Rule of Civil Procedure 12 (b)(6). To survive dismissal under Rule 12 (b)(6), a complaint must contain more than "[t]threadbare recitals of the elements of a cause of action, supported by mere conclusory statements."

Iqbal, 129 S.Ct. at 1949.

1. Bivens Claim

We agree with the District Court that Mayercheck has failed to sufficiently plead a case against any defendant under the doctrine in Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971). Under Bivens, a plaintiff may bring a claim against federal officers acting under color of law for violations of that individual's constitutional rights. Id. At 396-97. Mayercheck has not made any allegations about a federal agent. Accordingly, he failed to plead a plausible claim for relief under Bivens, see Iqbal, 129 S.Ct. at 1949, and the District Court properly dismissed the claim.

2. Absolute Judicial Immunity

We also agree with the District Court that the judicial defendants are immune from Mayercheck's claims for damages. The doctrine of absolute judicial immunity bars such claims so long as the individual was acting within his or her judicial capacity and had jurisdiction to so act. See Stump v. Sparkman, 435 U.S. 349, 356-57 (1978). As the District Court

Found, all of the defendant judges were acting within their jurisdiction throughout Mayercheck's divorce and support proceedings. Mayercheck failed to plead sufficient facts to allow an inference otherwise. See Iqbal, 129 S. Ct. at 1949. Mayercheck argues on appeal that "' progressive' law interpretation" should allow for a change in the doctrine, and cites recent examples of well-publicized judicial corruption in Luzerne County. We find his argument unpersuasive in this content. We see no error in the District Court's conclusion that allowing Mayercheck to amend his complaint would be futile. See Phillips v. County of Allegheny, 515 F. 3d 224, 245 (3d Cir. 2008).

3. Claims Under the Civil Rights Act

Assuming the District Court had jurisdiction over any of Mayercheck's claims, the only remaining defendants are Wiker and Barbara. He argued that Wiker and Barbara conspired with the other defendants to ensure a favorable outcome for Barbara and to deprive him access to the courts. We agree that Mayercheck failed to state a claim against either defendant under 42 U.S.C. ,

1983,1985, or 1986. First, to succeed on a 1983 claim, a plaintiff must show that the defendant, acting under the color of state law, deprived him of a federal right. West v. Atkins, 487 U.S. 42, 48 (1988). Neither Barbara nor Wiker was acting under color of law, and we agree with the District Court that Mayercheck's assertions that they conspired with the other judicial defendants are mere conclusory allegations. Therfore, he fails to state a claim under 1983. See Iqbal, 129 S. Ct. at 1949. Mayercheck's claims under sections 1985 and 1986 are similarly speculative, and the District Court did not err in determining that he failed to state a plausible claim for relief. Id.

The District Court then properly dismissed Mayercheck's remaining state law claims for lack of supplemental jurisdiction.

IV.

Mayercheck adds a claim on appeal that the District Court conspired with the state courts to "retract" his case to court after having designated it for Alternative Dispute Resolution ("ADR"). He does not allege any facts to support this assertion of

conspiracy. In any event, the record reveals that the District Court granted the judicial defendants' motion to be exempt from the ADR program only until final disposition of their motions to dismiss.

V.

For the foregoing reasons, we will affirm the District Court's Judgment.

Case 2:08-cv-01112-LPL

Document 4 Filed 08/29/2008

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF
PENNSYLVANIA

RE: Civil Action No. 08-1112

Mayercheck v. Judges of the Pennsylvania Supreme Court, et al

NOTICE

The instant civil action has been designated for placement into the United States District Court for the Western District of Pennsylvania's Alternative Dispute Resolution (ADR) program.

The parties are directed to fully complete the required Rule 26(f) report, which includes the stipulation of selecting an ADR process.
For further information, parties should refer to Local Rule 16.2 and the Court's ADR Policies and Procedures, which can be accessed at the Court's website at www.pawd.uscourts.gov

Counsel for plaintiff(or in the case of a removal action, counsel for removing defendant) shall make service of this notice to all parties.

The attorneys of record and all unrepresented parties that appear in this case are reminded that they are jointly responsible for submitting to the Court the following documents prior to the Initial Case Management Conference, in addition to any additional requirements of the assigned Judge:

(a) a written report required by Fed. R. Civ. P. 26(f), in the format set forth in Appendix B to the Local Rule 16.1.1B

(b) a stipulation of selecting an ADR process (pursuant to Revised Local Rule 16.2).

FINANCIAL LEDGER OF WIFE'S ATTORNEY
PAUL MILLER

Reference is made to ex-parte conference with Judge Rita Hathaway after court closed on Friday, June 7, 2002. Exhibit given to District Court and Petitioner made Third Circuit aware.

06/07/02- Telephone conference, Judge R. Hathaway, Re: Dr. Mayerchecks Order of Court 15 minutes; charge $31.25

Official Docket Entries in Mayercheck divorce

06/07/2002- CNV recorded the following Case Action Note: COURT DATED JUNE 7, 2002 THAT A TEMPORARY INJUNCTION IS ISSUED AS LISTED. A HEARING WILL BE HELD BEFORE MASTER RALPH CONRAD TO DETERMINE THE MERITS OF THE PETITION. HEARING IS SCHEDULED FOR JULY 18, 2002 AT 9:00AM

06/10/2002- Filing recorded: ORDER DATED JUNE 7, 2002 THAT TEMPORY INJUNCTION IS RESCINDED.

Copy of Withdrawal of Barbara J. Mayercheck's Divorce Complaint in 2000

IN THE COURT OF COMMON PLEAS OF
WESTMORELAND COUNTY, PENNSYLVANIA
CIVIL ACTION--LAW

Barbara J. Mayercheck

Plaintiff No. 952 of 2000D

vs.,

Joseph A. Mayercheck

Defendant

WITHDRAWAL OF DIVORCE PETITION AND DISTRIBUTION OF ASSETS

I, BARBARA J. MAYERCHECK, WITHDRAW THE ABOVE NAMED PETITION THAT WAS FILED ON MAY 23, 2000.

6/9/00 Barbara J. Mayercheck/s

Barbara J. Mayercheck

Personally appeared this 9th day of June 2000

Vanda H. Evancko

NOTARY PUBLIC

Filed in Prothonotary
00 JUN-9 PM 12:05

DOCUMENT ALLEGEDLY FILED SAME DAY AS WITHDRAWAL OF DIVORCE COMPLAINT

IN THE COURT OF COMMON PLEAS OF
WESTMORELAND COUNTY, PENNSYLVANIA
CIVIL ACTION-LAW
NO. 952 OF 2000D
WITHDRAW OF DISTRIBUTION OF ASSETS

I, BARBARA J. MAYERCHECK AND JOSEPH A. MAYERCHECK, WITHDRAW THE DISTRIBUTION OF ASSETS FILED MAY 23, 2000.

Barbara J. (Irwin) Mayercheck/s
Barbara J. (Irwin) Mayercheck

Joseph A. Mayercheck/s
Joseph A. Mayercheck
6/9/00

(this document was not notarized nor filed with the Protonotary)

SERVICE LIST

I, Joseph A. Mayercheck, verify that three copies of this Supplemental Appendix C was sent to counsel for the Defendants:

1. A. Taylor Williams (all judicial defendants)
   Supreme Court of Pennsylvania
   1515 Market St., Suite 1414
   Philadelphia, Pa. 19102
2. Donald Moreman (William Wiker)
   231 South Main St., Ste. 205
   Greensburg, Pa. 15601
3. Mitchel Zemel (Barbara J. Mayercheck)
   229 South High St.
   Zelienople, Pa. 16063

Joseph A. Mayercheck

Joseph A. Mayercheck

11/5/2010